at the request of the New York Central. The defendants offered evidence to show that the New York Central was responsible for the failure to redeem the default on the bonds before it was too late, since the directors of the Northern, under the Central's control, diverted earnings and refused profitable traffic in order to enable the Central to procure a foreclosure and purchase at the sale. For rejection of this evidence the Court of Appeals has ordered a new trial, reversing the judgment of the General Term of the Supreme Court (28 N. Y. Supp. 933). The decision is based on the theory that it is an attempt in equity to secure the benefits of a wrong. That the trustee might have brought the action of his own motion, an argument that had weight below, is answered by saying that he might not and has not, so that the objection to the suit is not avoided.

To afford protection here is eminently proper. Not only are the rights of minority stockholders involved, but also the rights of other holders of bonds. That the latter will be given their full legal rights, even though the defendants prove their case at the new trial, is not to be doubted. The interesting question is whether a solution of the difficulty, more satisfactory and just to all parties than a foreclosure by the trustee, will not be found. If the case is proved, the New York Central is guilty of a wrong, for which no recovery can be had at law because of their control of the corporation. In the language of Mr. Morawetz it is "a conspiracy to commit a breach of trust" (Vol. I, § 529), which has in part succeeded. Under such circumstances had benefits been received under a contract, or money been wrongfully diverted, restitution would be compelled. Why should not equity as well decree reparation for the wrong? The ground of recovery in either case is that things must be put *in statu quo*. This would be a result as acceptable to bondholders as to stockholders. The former would receive back-interest, be protected from the risk of loss incident to a sale, and would still have their investment. It is conceived that little difficulty would be found in getting the necessary parties before the court by amendment under modern rules of practice.

THE WAY OF THE PHYSICIAN IS HARD. — An interesting example of the extent of a physician's liability for negligence is furnished by a recent decision of the Supreme Court of Massachusetts, *Harriott* v. *Plimpton*, 44 N. E. Rep. 992. The facts of the case were briefly as follows. The plaintiff, who was engaged to marry the daughter of M., was falsely accused of being afflicted with a venereal disease. M. employed the defendant, a physician, to examine the plaintiff, who consented to the transaction, and to report the result to himself and family. The defendant mistakenly pronounced the disease to be venereal. In consequence the engagement was broken. The court held that the defendant's duty of exercising ordinary diligence, care, and skill in a professional undertaking extended to a case where only information was sought; and that the breaking of the engagement was a damage not too remote to sustain the action. This conclusion, it is submitted, is entirely correct. The evident justice of the result, however, is at first more apparent than the really substantial grounds of decision which a further consideration of the case reveals.

It is a perfectly well established principle of law, "that he who undertakes the public practice of any profession undertakes that he has the

ordinary skill and knowledge necessary to perform his duty toward those resorting to him in that character." 2 Beven, Neg., 2d ed., 1397. *Sears* v. *Prentice*, 8 East, 348. This duty arises out of the fact of the undertaking merely, and therefore is not at all dependent upon the existence of any contractual relation. The plaintiff's right to careful and skilful treatment, then, was in no wise affected because the defendant was employed by M. *Pippin* v. *Sheppard*, 11 Price, 400; *Longmeid* v. *Halliday*, 6 Exch. 761, per Parke, B., at p. 767; *Dubois* v. *Decker*, 130 N. Y. 325. See also an article on Gratuitous Undertakings, 5 HARVARD LAW REVIEW, 222.

The defendant would have been bound to use due diligence in performing an operation or in prescribing a remedy. Was the duty of care any less in making an examination for the sole purpose of giving information to those interested? If legal damage might result in each case, it would seem irrational to draw distinctions. Legal damage certainly resulted in this case. As early as the sixteenth century, loss of marriage, whether the plaintiff was man or woman, was held to be injury sufficient to support an action of slander. *Dame Morrison's Case*, Jenk. 316; *Davies* v. *Gardiner*, Popham, 36; *Matthew* v. *Crasse*, 2 Bulst. 89. There is no reason why it should not equally well support an action for negligence. The only remaining question is whether the damage was too remote. It was surely a natural and proximate result, and, in view of the fact that part of the defendant's task was to report to M.'s family, it was not only a probable, but an intended consequence. Unusual as the steps to the decision at first appear, the conclusion is found to be sound in point of principle and law.

ONE-MAN CORPORATIONS — BRODERIP *v.* SALOMON REVERSED. — The decision of Mr. Justice Williams in the case of *Broderip* v. *Salomon*, affirmed by Lord Justice Lindley in the Court of Appeals (72 L. T. Rep. 755), has very recently been reversed by the House of Lords (*Salomon* v. *Salomon & Co.*, 13 *The Times* L. R. 46). This will be a satisfaction to most lawyers, and certainly a great relief to many business men. It is now settled that, in the absence of fraud, there is nothing in the intent or policy of the English Companies Act requiring each stockholder to have a real and independent interest in the business. Six of the required seven may be "straw" men, and nobody can object. If this state of things seems undesirable, it is for the legislature, not the courts, to make the change.

The question in this case did not come up between the creditors of the company and the "one man," the promoter vendor, but between the latter and the company itself. In liquidation proceedings against the company Aron Salomon filed an application, whereupon the liquidator counterclaimed, demanding that the applicant indemnify the company for all its debts. It was shown that the six stockholders beside Aron Salomon were his wife and five children, and that each one of these straw members held but one share of stock, although the capital was £40,000 in £1 shares. There seems to have been evidence enough to make it plain that the control of the business in fact was retained by Salomon when he sold it to this company, that he got all the profits, and that the primary object of the sale was to obtain the benefit of limited liability. Mr. Justice Williams held that the applicant was bound to indemnify the company for its debts. There are at least three possible grounds for going back of a company and holding its promoter to such a liability: (1) the